

Senate File 375 - Enrolled

PAG LIN

SENATE FILE 375

1 1
1 2
1 3 AN ACT
1 4 CREATING THE UNIFORM ENVIRONMENTAL COVENANTS ACT.
1 5
1 6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 7
1 8 Section 1. Section 455B.103, Code 2005, is amended by
1 9 adding the following new subsection:
1 10 NEW SUBSECTION. 7. At the discretion of the director,
1 11 enter into environmental covenants in accordance with chapter
1 12 455L and accept or maintain such other real property interests
1 13 as shall be appropriate for the protection of human health and
1 14 safety or the environment.
1 15 Sec. 2. Section 455B.474, subsection 1, paragraph f,
1 16 subparagraph (4), subparagraph subdivision (f), Code 2005, is
1 17 amended to read as follows:
1 18 (f) Other relevant site specific factors such as the
1 19 feasibility of available technologies, existing background
1 20 contaminant levels, current and planned future uses,
1 21 ecological, aesthetic, and other relevant criteria, and the
1 22 applicability and availability of engineering and
1 23 institutional controls, including an environmental covenant as
1 24 established by chapter 455L.
1 25 Sec. 3. Section 455H.103, Code 2005, is amended by adding
1 26 the following new subsection:
1 27 NEW SUBSECTION. 7A. "Environmental covenant" means a
1 28 servitude arising under an environmental response project that
1 29 imposes activity and use limitations as defined in section
1 30 455L.2.
1 31 Sec. 4. Section 455H.206, subsections 2, 3, 4, 5, and 6,
1 32 Code 2005, are amended to read as follows:
1 33 2. An institutional or technological control includes any
1 34 of the following:
1 35 a. A state or federal law or regulation.
2 1 b. An ordinance of any political subdivision of the state.
2 2 c. A contractual obligation recorded and executed in a
2 3 manner satisfying chapter 558.
2 4 d. A control which the participant can demonstrate reduces
2 5 or manages the risk from a release through the period
2 6 necessary to comply with the applicable standards.
2 7 e. An environmental protection easement filed prior to the
2 8 effective date of this Act.
2 9 f. An environmental covenant created in accordance with
2 10 chapter 455L.
2 11 3. If the department's determination of compliance with
2 12 applicable standards pursuant to subchapter 3 is conditioned
2 13 on a restriction in the use of any real estate in the affected
2 14 area, the participant must utilize an institutional control.
2 15 If the restriction in use is to limit the use to
2 16 nonresidential use, the participant must use an environmental
2 17 protection easement covenant as the institutional control.
2 18 ~~Environmental protection easements covenants may also be used~~
2 19 ~~to implement other institutional or technological controls.~~
2 20 ~~An environmental protection easement must be granted by the~~
2 21 ~~fee title owners of the relevant real estate. The participant~~
2 22 ~~shall furnish to the department abstracts of title and other~~
2 23 ~~documents sufficient to enable the department to determine~~
2 24 ~~that the easements will be enforceable. An environmental~~
2 25 ~~protection easement shall be in a form provided by rule of the~~
2 26 ~~department. An environmental protection easement must provide~~
2 27 ~~all of the following:~~
2 28 ~~a. The easement names the state, acting through the~~
2 29 ~~department, as grantee.~~
2 30 ~~b. The easement identifies the activity either being~~
2 31 ~~restricted or required through the institutional or~~
2 32 ~~technological control.~~
2 33 ~~c. The easement runs with the land, binding the owner of~~
2 34 ~~the land and the owner's successors and assigns.~~
2 35 ~~d. The easement shall include an acknowledgment by the~~
3 1 ~~director of acceptance of the easement by the department.~~
3 2 ~~e. The easement is filed in the office of the recorder of~~
3 3 ~~the county in which the real estate is located and in any~~
3 4 ~~central registry which may be created by the director covenant~~
3 5 ~~must comply with the requirements of chapter 455L.~~

3 6 4. If the use of an institutional or technological control
3 7 is confirmed in a no further action letter issued pursuant to
3 8 section 455H.301, the institutional or technological control
3 9 may be enforced in district court by the department, a
3 10 political subdivision of this state, the participant, or any
3 11 successor in interest to the participant. ~~An environmental
3 12 protection easement granted pursuant to subsection 3 shall be
3 13 enforceable in perpetuity notwithstanding sections 614.24
3 14 through 614.38. After the recording of the easement, each
3 15 instrument transferring an interest in the area affected by
3 16 the easement shall include a specific reference to the
3 17 recorded easement. If a transfer instrument fails to include
3 18 a specific reference to the recorded easement, the transferor
3 19 may lose any of the benefits provided by this chapter.~~

3 20 5. An institutional or technological control, except for
3 21 an environmental ~~protection easement~~ covenant, may be removed,
3 22 discontinued, modified, or terminated by the participant or a
3 23 successor in interest to the participant upon a demonstration
3 24 that the control no longer is required to assure compliance
3 25 with the applicable standard. Upon review and approval by the
3 26 department, the department shall issue an amendment to its no
3 27 further action letter approving the removal, discontinuance,
3 28 modification, or termination of an institutional or
3 29 technological control which is no longer needed.

3 30 6. An environmental ~~protection easement granted~~ covenant
3 31 created pursuant to subsection 3 may be ~~released~~ terminated or
3 32 amended only by a ~~release or amendment of the easement~~
3 33 ~~executed by the director and filed with the county recorder in~~
3 34 accordance with chapter 455L. The department may determine

3 35 that any person who intentionally violates an environmental
4 1 ~~protection easement~~ covenant or other technological or
4 2 institutional control contained in a no further action letter
4 3 loses any of the benefits provided by this chapter as to the
4 4 affected area. In the event the technological or
4 5 institutional controls fail to achieve compliance with the
4 6 applicable standards, the participant shall undertake an
4 7 additional response action sufficient to demonstrate to the
4 8 department compliance with applicable standards. Failure to
4 9 proceed in a timely manner in performing the additional
4 10 response action may result in termination of the participant's
4 11 enrollment in the land recycling program.

4 12 Sec. 5. NEW SECTION. 455L.1 TITLE.

4 13 This chapter shall be known and cited as the "Uniform
4 14 Environmental Covenants Act".

4 15 Sec. 6. NEW SECTION. 455L.2 DEFINITIONS.

4 16 As used in this chapter, unless the context otherwise
4 17 requires:

4 18 1. "Activity and use limitations" means restrictions or
4 19 obligations created under this chapter with respect to real
4 20 property. "Activity and use limitations" may include, but is
4 21 not limited to, restrictions on installation of water wells
4 22 and other exposure receptors, construction of surface and
4 23 subsurface structures, disturbance of and maintenance of soil
4 24 caps and technological controls, and land use classifications
4 25 such as residential, nonresidential, or industrial.

4 26 2. "Agency" means the department of natural resources
4 27 created by section 455A.2 or any other state department or
4 28 federal agency that determines or approves the environmental
4 29 response project pursuant to which an environmental covenant
4 30 is created.

4 31 3. "Common interest community" means a condominium,
4 32 cooperative, or other real property with respect to which a
4 33 person, by virtue of the person's ownership of a parcel of
4 34 real property, is obligated to pay property taxes or insurance
4 35 premiums for, or for maintenance or improvement of, other real
5 1 property described in a recorded covenant that creates the
5 2 common interest community.

5 3 4. "Environmental covenant" means a servitude arising
5 4 under an environmental response project that imposes activity
5 5 and use limitations or the written document creating such
5 6 servitude.

5 7 5. "Environmental response project" means a plan or work
5 8 performed for environmental remediation affecting real
5 9 property and conducted under or by one of the following:

5 10 a. A federal or state program that is subject to the
5 11 jurisdiction of an agency, including but not limited to
5 12 programs established by chapters 455B and 445G, corrective or
5 13 response actions pursuant to 42 U.S.C. } 6901 et seq., and
5 14 remedial actions under 42 U.S.C. } 9601 et seq.

5 15 b. A federal or state program for the replacement or
5 16 protection of ecological features including wetlands.

5 17 c. A state voluntary cleanup program authorized in chapter
5 18 455H.

5 19 d. An incident to a closure conducted with approval of an
5 20 agency of a solid or hazardous waste management unit, a
5 21 sanitary disposal project, or an underground storage tank.

5 22 6. "Grantor" means any person with sufficient fee title or
5 23 other property ownership interests necessary to create a valid
5 24 environmental covenant under Iowa law.

5 25 7. "Holder" means the grantee of an environmental covenant
5 26 as specified in section 455L.3, subsection 1.

5 27 8. "Person" means an individual, corporation, business
5 28 trust, estate, trust, partnership, limited liability company,
5 29 association, joint venture, public corporation, government,
5 30 governmental subdivision, agency, or instrumentality, or any
5 31 other legal or commercial entity.

5 32 9. "Record", used as a noun, means information that is
5 33 inscribed on a tangible medium or that is stored in an
5 34 electronic or other medium and is retrievable in perceivable
5 35 form.

6 1 Sec. 7. NEW SECTION. 455L.3 NATURE OF RIGHTS ==
6 2 SUBORDINATION OF INTERESTS.

6 3 1. Any person, including a person that owns an interest in
6 4 the real property, an agency, or a municipality or other unit
6 5 of local government, may be a holder. An environmental
6 6 covenant may identify more than one holder. The interest of a
6 7 holder is an interest in real property.

6 8 2. A right of an agency under this chapter or under an
6 9 environmental covenant, other than a right as a holder, is not
6 10 an interest in real property.

6 11 3. An agency is bound by any obligation it assumes in an
6 12 environmental covenant, but an agency does not assume
6 13 obligations merely by signing an environmental covenant. Any
6 14 other person that signs an environmental covenant is bound by
6 15 the obligations the person assumes in the environmental
6 16 covenant, but signing the environmental covenant does not
6 17 change obligations, rights, or protections granted or imposed
6 18 under law or administrative action other than this chapter
6 19 except as provided in the environmental covenant.

6 20 4. The following rules apply to interests in real property
6 21 in existence at the time an environmental covenant is created
6 22 or amended:

6 23 a. An interest that has priority under other law is not
6 24 affected by an environmental covenant unless the person that
6 25 owns the interest subordinates that interest to the
6 26 environmental covenant.

6 27 b. This chapter does not require a person that owns a
6 28 prior interest to subordinate that interest to an
6 29 environmental covenant or to agree to be bound by the
6 30 environmental covenant.

6 31 c. A subordination agreement may be contained in an
6 32 environmental covenant covering real property or in a separate
6 33 record. If the environmental covenant covers commonly owned
6 34 property in a common interest community, the covenant or
6 35 record may be signed by any person authorized by the governing
7 1 board of the owners' association.

7 2 d. An agreement by a person to subordinate a prior
7 3 interest to an environmental covenant affects the priority of
7 4 that person's interest but does not by itself impose any
7 5 affirmative obligation on the person with respect to the
7 6 environmental covenant.

7 7 Sec. 8. NEW SECTION. 455L.4 CONTENTS OF ENVIRONMENTAL
7 8 COVENANT.

7 9 1. An environmental covenant shall contain all of the
7 10 following:

7 11 a. A statement that the instrument is an environmental
7 12 covenant executed pursuant to this chapter.

7 13 b. A legally sufficient description of the real property
7 14 subject to the environmental covenant.

7 15 c. A description of the activity and use limitations on
7 16 the real property.

7 17 d. The identity of every holder and grantor.

7 18 e. A signature by the grantor, the agency, every holder,
7 19 and, unless waived by the agency, every owner in fee simple of
7 20 the real property subject to the environmental covenant.

7 21 f. Identification of the name and location of any final
7 22 agency action decision documents for the environmental
7 23 response project reflected in the environmental covenant.

7 24 g. The rights of access to the real property granted in
7 25 connection with implementation or enforcement of the
7 26 environmental covenant.

7 27 2. In addition to the information required in this

7 28 section, an environmental covenant may contain other
7 29 information, restrictions, and requirements agreed to by the
7 30 persons who sign the environmental covenant, including any of
7 31 the following:

7 32 a. Requirements for periodic reporting describing
7 33 compliance with the environmental covenant.

7 34 b. Requirements for notice to an agency following transfer
7 35 of a specified interest in, or concerning proposed changes in
8 1 use of, applications for building permits for, or proposals
8 2 for any site work affecting the contamination on, the real
8 3 property subject to the environmental covenant.

8 4 c. A brief narrative description of the contamination and
8 5 remedy, including the contaminants of concern, the pathways of
8 6 exposure, limits on exposure, and the location and extent of
8 7 the contamination.

8 8 d. Limitations on amendment or termination of the
8 9 environmental covenant in addition to those contained in
8 10 sections 455L.9 and 455L.10.

8 11 e. Rights of the holder in addition to the holder's right
8 12 to enforce the environmental covenant pursuant to section
8 13 455L.11.

8 14 3. In addition to other conditions for its approval of an
8 15 environmental covenant authorized by law, an agency may
8 16 require those persons specified by the agency who have
8 17 interests in the real property to sign the environmental
8 18 covenant.

8 19 Sec. 9. NEW SECTION. 455L.5 VALIDITY == EFFECT ON OTHER
8 20 INSTRUMENTS.

8 21 1. An environmental covenant that complies with this
8 22 chapter runs with the land.

8 23 2. An environmental covenant that is otherwise effective
8 24 is valid and enforceable even if any of the following applies
8 25 to the environmental covenant:

8 26 a. The environmental covenant is not appurtenant to an
8 27 interest in real property.

8 28 b. The environmental covenant can be or has been assigned
8 29 to a person other than the original holder.

8 30 c. The environmental covenant is not of a character that
8 31 has been recognized traditionally at common law.

8 32 d. The environmental covenant imposes a negative burden.

8 33 e. The environmental covenant imposes an affirmative
8 34 obligation on a person having an interest in the real property
8 35 or on the holder.

9 1 f. The benefit or burden does not touch or concern real
9 2 property.

9 3 g. There is no privity of estate or contract.

9 4 h. The holder dies, ceases to exist, resigns, or is
9 5 replaced.

9 6 i. The owner of an interest subject to the environmental
9 7 covenant and the holder are the same person.

9 8 3. An instrument that creates restrictions or obligations
9 9 with respect to real property that would qualify as activity
9 10 and use limitations except for the fact that the instrument
9 11 was recorded before the effective date of this chapter is
9 12 valid and enforceable and is not rendered invalid or
9 13 unenforceable based upon any of the potential limitations on
9 14 enforcement of interests described in subsection 2 or because
9 15 it was identified as an easement, servitude, deed restriction,
9 16 or other interest. This chapter does not apply in any other
9 17 respect to such an instrument.

9 18 4. This chapter does not invalidate or render
9 19 unenforceable any interest, whether designated as an
9 20 environmental covenant or other interest, that was created
9 21 prior to the enactment of this chapter or that is otherwise
9 22 enforceable under the laws of this state.

9 23 Sec. 10. NEW SECTION. 455L.6 RELATIONSHIP TO OTHER LAND=
9 24 USE LAW.

9 25 This chapter does not authorize a use of real property that
9 26 is otherwise prohibited by zoning, by law other than this
9 27 chapter regulating use of real property, or by a recorded
9 28 instrument that has priority over the environmental covenant.
9 29 An environmental covenant may prohibit or restrict uses of
9 30 real property which are authorized by zoning or by law other
9 31 than this chapter.

9 32 Sec. 11. NEW SECTION. 455L.7 NOTICE.

9 33 1. A copy of a recorded environmental covenant shall be
9 34 provided to each of the following in the manner required by an
9 35 agency:

10 1 a. Each person that signed the environmental covenant.

10 2 b. Each person holding a recorded interest in the real
10 3 property subject to the environmental covenant.

10 4 c. Each person in possession of the real property subject
10 5 to the environmental covenant.

10 6 d. Each municipality or other unit of local government in
10 7 which real property subject to the environmental covenant is
10 8 located.

10 9 e. Any other person the agency requires.

10 10 2. The validity of an environmental covenant is not
10 11 affected by failure to provide a copy of the environmental
10 12 covenant as required under this section.

10 13 Sec. 12. NEW SECTION. 455L.8 RECORDING.

10 14 1. An environmental covenant and any amendment or
10 15 termination of the environmental covenant shall be recorded in
10 16 every county in which any portion of the real property subject
10 17 to the environmental covenant is located. For purposes of
10 18 indexing, a holder shall be treated as a grantee.

10 19 2. Except as otherwise provided in section 455L.9,
10 20 subsection 4, an environmental covenant is subject to the laws
10 21 of this state governing recording and priority of interests in
10 22 real property.

10 23 Sec. 13. NEW SECTION. 455L.9 DURATION == AMENDMENT BY
10 24 COURT OR DEPARTMENT ACTION.

10 25 1. An environmental covenant is perpetual unless any of
10 26 the following occurs:

10 27 a. The environmental covenant, by its terms, is limited to
10 28 a specific duration or terminated by the occurrence of a
10 29 specific event.

10 30 b. The environmental covenant is terminated by consent
10 31 pursuant to section 455L.10.

10 32 c. The environmental covenant is terminated pursuant to
10 33 subsection 2 or 3.

10 34 d. The environmental covenant is terminated by foreclosure
10 35 of an interest that has priority over the environmental
11 1 covenant.

11 2 e. The environmental covenant is terminated or modified in
11 3 an eminent domain proceeding, but only if all of the following
11 4 occur:

11 5 (1) The agency that signed the document, if any, is a
11 6 party to the proceeding.

11 7 (2) Each person that signed the environmental covenant,
11 8 unless the person waived in a signed record the right to
11 9 consent or a court finds that the person no longer exists or
11 10 cannot be located or identified with the exercise of
11 11 reasonable diligence, and the current property owner are given
11 12 notice of the pendency of the proceeding.

11 13 (3) The court determines, after hearing, that the
11 14 termination or modification will not adversely affect human
11 15 health and safety or the environment.

11 16 2. If the agency that signed an environmental covenant is
11 17 a state agency and has determined that the intended purposes
11 18 can no longer be realized, the agency may terminate the
11 19 environmental covenant or reduce its burden on the real
11 20 property subject to the environmental covenant. Notice shall
11 21 be provided to each person that signed the covenant or their
11 22 assignee, to the current property owner, and to any other
11 23 persons identified in section 455L.10, subsection 1. The
11 24 agency's determination or failure to make a determination upon
11 25 request shall constitute final agency action. Failure by the
11 26 agency to make a determination within sixty days upon request
11 27 shall constitute final agency action. Any person entitled to
11 28 notice by the agency shall be entitled to judicial review
11 29 pursuant to section 17A.19 with the following exceptions:

11 30 a. Proceedings for judicial review shall be filed in the
11 31 county in which the environmental covenant was recorded.

11 32 b. Notwithstanding section 17A.19, subsection 2, service
11 33 of process shall not be jurisdictional and shall be as
11 34 provided in the Iowa rules of civil procedure.

11 35 c. Notwithstanding section 17A.19, subsection 3, a
12 1 petition for judicial review shall be filed within thirty days
12 2 of the written decision by the agency. Such filing shall be
12 3 jurisdictional.

12 4 d. The district court shall hear and consider relevant
12 5 evidence, including testimony or other evidence not considered
12 6 by the agency, regarding the question of whether the
12 7 environmental covenant should be terminated or the burden on
12 8 the real estate reduced if, based on changed circumstances,
12 9 the court determines the intended purposes of the
12 10 environmental covenant can no longer be realized.

12 11 3. If the agency that signed an environmental covenant is
12 12 a federal agency, the agency's determination or failure to
12 13 make a determination as provided in subsection 2 shall be
12 14 reviewable in accordance with applicable federal law.

12 15 4. Except as otherwise provided in subsections 1, 2, and
12 16 3, an environmental covenant may not be extinguished, limited,
12 17 or impaired through issuance of a tax deed, foreclosure of a
12 18 tax lien, or application of the doctrine of adverse
12 19 possession, prescription, abandonment, waiver, lack of
12 20 enforcement, or acquiescence, or a similar doctrine.

12 21 5. An environmental covenant may not be extinguished,
12 22 limited, or impaired by application of section 558.68 or
12 23 sections 614.24 through 614.38.

12 24 Sec. 14. NEW SECTION. 455L.10 AMENDMENT OR TERMINATION
12 25 BY CONSENT.

12 26 1. An environmental covenant may be amended or terminated
12 27 by consent only if the amendment or termination is signed by
12 28 all of the following:

12 29 a. The agency.

12 30 b. The current owner in fee simple of the real property
12 31 subject to the environmental covenant.

12 32 c. Each person that originally signed the environmental
12 33 covenant or an assignee of an original signatory, unless the
12 34 person waived in a recorded document the right to consent or
12 35 the agency finds that the person no longer exists or cannot be
13 1 located or identified with the exercise of reasonable
13 2 diligence.

13 3 d. Except as otherwise provided in subsection 4, paragraph
13 4 "b", the holder.

13 5 2. If an interest in real property is subject to an
13 6 environmental covenant, the interest is not affected by an
13 7 amendment to the environmental covenant unless the current
13 8 owner of the interest consents to the amendment or has waived
13 9 in a recorded document the right to consent to amendments.

13 10 3. Except for an assignment undertaken pursuant to a
13 11 governmental reorganization, assignment of an environmental
13 12 covenant to a new holder is an amendment.

13 13 4. Except as otherwise provided in an environmental
13 14 covenant, all of the following apply:

13 15 a. A holder may not assign its interest without consent of
13 16 the other parties as provided in subsection 1.

13 17 b. A holder may be removed and replaced by agreement of
13 18 the other parties specified in subsection 1.

13 19 c. A court of competent jurisdiction may fill a vacancy in
13 20 the position of holder.

13 21 Sec. 15. NEW SECTION. 455L.11 ENFORCEMENT OF
13 22 ENVIRONMENTAL COVENANT.

13 23 1. A civil action for injunctive or other equitable relief
13 24 for violation of an environmental covenant may be maintained
13 25 by any of the following:

13 26 a. A holder or grantor.

13 27 b. The agency or, if it is not the agency with authority
13 28 to determine or approve the environmental response project,
13 29 the department of natural resources.

13 30 c. Any person to whom the environmental covenant expressly
13 31 grants power to enforce the environmental covenant.

13 32 d. A person whose interest in the real property or whose
13 33 collateral or liability may be affected by the alleged
13 34 violation of the environmental covenant.

13 35 e. A municipality or other unit of local government in
14 1 which the real property subject to the environmental covenant
14 2 is located.

14 3 2. This chapter does not limit the regulatory authority of
14 4 an agency under law other than this chapter with respect to an
14 5 environmental response project.

14 6 3. A person is not responsible for or subject to liability
14 7 for environmental remediation solely because it has the right
14 8 to enforce an environmental covenant.

14 9 Sec. 16. NEW SECTION. 455L.12 RELATION TO ELECTRONIC
14 10 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

14 11 This chapter modifies, limits, or supersedes the federal
14 12 Electronic Signatures in Global and National Commerce Act, 15
14 13 U.S.C. } 7001 et seq., but does not modify, limit, or
14 14 supersede section 101(a) of that Act, 15 U.S.C. } 7001(a), or
14 15 authorize electronic delivery of any of the notices described
14 16 in section 103(b) of that Act, 15 U.S.C. } 7003(b).

14 17 Sec. 17. Section 558.68, Code 2005, is amended by adding
14 18 the following new subsection:

14 19 NEW SUBSECTION. 5. This section shall not impair the
14 20 validity of an environmental covenant established pursuant to
14 21 chapter 455L.

14 22 Sec. 18. Section 614.24, Code 2005, is amended by adding
14 23 the following new unnumbered paragraph:

14 24 NEW UNNUMBERED PARAGRAPH. This section shall not impair
14 25 the validity of an environmental covenant established pursuant

14 26 to chapter 455L.
14 27 Sec. 19. Section 614.32, Code 2005, is amended by adding
14 28 the following new subsection:
14 29 NEW SUBSECTION. 6. All interests created by an
14 30 environmental covenant established pursuant to chapter 455L.

14 31
14 32
14 33
14 34 _____
14 35 JOHN P. KIBBIE
President of the Senate

15 1
15 2
15 3
15 4 _____
15 5 CHRISTOPHER C. RANTS
15 6 Speaker of the House

15 7 I hereby certify that this bill originated in the Senate and
15 8 is known as Senate File 375, Eighty-first General Assembly.

15 9
15 10
15 11
15 12 _____
15 13 MICHAEL E. MARSHALL
15 14 Secretary of the Senate

15 14 Approved _____, 2005

15 15
15 16
15 17 _____
15 18 THOMAS J. VILSACK
15 19 Governor